IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 8547 of 2007(P)

PETITIONER:

1. THE MANAGER,
   C.A. HIGH SCHOOL, PERUVAMBA, PALAKKAD DISTRICT.

2. M.ANWAR SADATH,
   PEON, C.A. HIGH SCHOOL, PERUVAMBA,
   PALAKKAD DISTRICT.

3. S.DIVAKARAN, AGED 31 YEARS,
   S/O. SIVARAMAN, FULL-TIME MENIAL,
   C.A.HIGH SCHOOL, PERUVAMBA, PALAKKAD DISTRICT.

4. MRS. K.A.BALKIS, D/O. ABDUL MAJEED,
   FULL-TIME MENIAL, C.A. HIGH SCHOOL,
   PERUVAMBA, PALAKKAD DISTRICT.

BY ADV. SRI.GEORGE ABRAHAM
SRI.O.K.MURALEEDHARAN

RESPONDENTS:

1. THE DISTRICT EDUCATIONAL OFFICER,
   PALAKKAD.

2. DEPUTY DIRECTOR OF EDUCATION,
   PALAKKAD.

3. STATE OF KERALA, REPRESENTED BY
   SECRETARY, GENERAL EDUCATION DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

4. K.M.UNNIKRISHNAN, S/O. C.V.KESAVAN,
   'AMBADI', AISHWARYA NAGAR, PUTHUNAGARAM,
   CHITTUR, PALAKKAD.

5. SMT. V.RAJESWARI, W/O. U.RAVI,
   10/392, RAMANATHAPURAM, PALAKKAD-1,
   NOW WORKING AS TEACHER, BHARATHA MATHA
   HIGHER SECONDARY, CHANDRANAGAR, PALAKKAD.

ADDITIONAL 6TH RESPONDENT:

6. AJAY.V.B., PHYSICAL EDUCATION TEACHER,
   C.A.HIGH SCHOOL, PERUVAMBA, PALAKKAD DT.

(ADDL.R6 IMPLEADED AS PER ORDER IN I.A.NO.12182/07
DTD.17.9.07)

BY ADV. SRI.P.R.VENKETESH
GOVERNMENT PLEADER SHRI.BASANT BALAJI
SRI.R.K.MURALEEDHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 1/10/2007, THE COURT ON 9.10.2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE APPOINTMENT ORDER OF P3 DTD.1.2.05.

P2. COPY OF THE -DO- P2 DTD.2.6.03.

P3. COPY OF THE APPLICAITO DTD.22.7.00 BY K.M.CHANDRIKA.

P4. COPY OF THE CERTIFICATE IN RESPECT OF THE SALARY OF THE 5TH RESPONDENT.

P5. COPY OF THE SALARY CERTIFICATE OF R5'S HUSBAND.

P6. COPY OF THE STAFF LIST OF BHARAMATHA HIGHER SECONDARY SCHOOL, PALAKKKAD DTD.18.11.2006.

P7. COPY OF THE ORDER DTD.7.7.03 OF D.E.O., PALAKKAD.

P8. COPY OF THE ORDER DTD.18.5.06 OF DEO, PALAKKAD.

P9. COPY OF THE GOVT. ORDER DTD.25.1.07.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.8547 of 2007

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Dated this the 9th day of October, 2007

J U D G M E N T

The 1st petitioner in this writ petition is the manager of the C.A.High School, Peruvamba in Palakkad District, which is an aided school and petitioners 2 to 4 are non-teaching staff of the same school, who were appointed on 2.6.2003, 1.2.2005 and 2.6.2003 respectively. Originally the 2nd petitioner was appointed as Full Time Menial in the school. The 2nd petitioner was promoted to the post of Peon and in the resultant vacancy of Full Time Menial, the third petitioner was appointed. The 4th petitioner was appointed as Full Time Menial in the vacancy that arose, consequent to the retirement of one Smt.Kamalakshy, on 2.6.2003. The father of the 4th respondent, C.V.Kesavan, was Full Time Menial of the school, who died on 19.7.2000. The mother of the 5th respondent Lalitha, was a Music Teacher of the school, who died on 12.7.2000. The issue involved in this writ petition is as to whether respondents 4 and 5 have preferential right for appointment under Rule 51B of Chapter XIVA of the KER to the

vacancies which arose subsequent to 9.7.2000 and 12.7.2000 respectively to which petitioners 2 to 4 were appointed.

2. After the death of the father of the 4th respondent, the mother of the 4th respondent submitted Ext.P3 application dated 22.7.2000 seeking employment to her son, the 4th respondent herein, under Rule 51B of Chapter XIVA of KER. as dependent of the deceased Sri.Kesavan. Later on in October, 2002, the 4th respondent himself filed an application in the proforma prescribed for applying under the scheme for compassionate employment under the Dying in Harness Scheme. The 5th respondent also submitted an application for employment under the Rule 51B, in respect of the date of which, there is a dispute between the petitioners and the 5th respondent. Originally, by Ext.P7 order the DEO rejected the claims of both the 4th and 5th respondents for compassionate employment under Rule 51B. Challenging Ext.P7, respondents 4 and 5 filed W.P(C).Nos.24655/2003 and 24622/2003 respectively, which were disposed of by this court directing the DEO, the 1st respondent herein, to consider the matter afresh, after hearing all parties. Pursuant thereto, the DEO passed Ext.P8 order upholding the claims of respondents 4

and 5 for compassionate employment under Rule 51B and directed the 1st petitioner-manager to implement that order. Against the same, the petitioners filed revision petitions which were directed to be disposed of as per judgment of this court in W.P(C).No.16650/2000. The Government of Kerala, the 3rd respondent herein, by Ext.P9 order dismissed the revision petitions upholding Ext.P8 order, again directing the 1st petitioner-manager to give suitable appointment to respondents 4 and 5 under Rule 51B of Chapter XVI A of the KER. Exts.P8 and P9 orders are under challenge in this writ petition.

3. The petitioners raise the following contentions: The 4th respondent is profitably employed elsewhere and is not interested in any employment in the school. Further, the application submitted by him in the prescribed form was submitted beyond the period of two years prescribed under the Scheme applicable and therefore, he is not entitled to any appointment under Rule 51B. The 5th respondent was not a dependent of her mother at the time of the death of her mother, since she was married at that time. Her father was an engineer working in the Government department who was drawing pension. She was working at the

Bharath Matha Higher Secondary School, Chandranagar, Palakkad, as a teacher. The 5th respondent's husband is an assistant administrative officer in the Oriental Insurance Company Ltd. drawing more than Rs.10,000/- per month. Therefore, the 5th respondent was not a dependent of her mother at the time of the death of her mother. Application submitted by the 5th respondent was highly belated and therefore, the same is not liable to be considered. The family income of the 5th respondent was beyond the limit of Rs.1,50,000/- prescribed in the Government order which regulates compassionate employment under the dying in harness scheme, which is made applicable to appointment under Rule 51B also.

4. A counter affidavit has been filed by the 5th respondent, which states that she is filing the same on behalf of the 4th respondent also. In respect of the factual averments in the writ petition, against the 4th respondent, he himself has not chosen to file any counter affidavit controverting the contentions in the writ petition. The 5th respondent would say that the 1st petitioner was evading receipt of applications submitted by both of them and there is no bonafides in the contention that

applications were belated. In respect of the averments against her, she would submit that what is relevant for the purpose of Rule 51B is the state of the family at the time of death and the compassionate employment is intended to tide over the immediate crisis that the family faces on the death of the employee, for which an employment shall be given to any one of the persons mentioned in the Government order regulating compassionate employment, which includes married daughter also. Therefore, there is no merit in the contention that the 5th respondent is not a dependent of her mother at the time of the death of her mother, she submits. She categorically refutes the contention that she has not applied in time for employment under Rule 51B and that the income of the family exceeded the limit prescribed under the Government order regulating such appointment. On these contentions respondents 4 and 5 would pray for dismissal of the writ petition.

5. The 1st respondent-District Educational Officer has also filed a counter affidavit, in which, he would support the impugned orders.

6. I have considered the rival contentions in detail.

7. I shall first deal with the question of law raised, which although raised before the DEO and the Government, does not appear to have been considered properly. In Ext.P9 order of the Government, it is specifically stated that the 1st petitioner had raised a contention that since the 5th respondent is a married daughter, she was not a dependent of her mother at the time of the death of her mother. As I have have already stated, the contention raised by the 5th respondent against this, is that it is not the individual dependency of the applicant seeking compassionate employment that is relevant for the purpose, but the deprivation of the income of the deceased to the whole family. Therefore, according to her, if the income of the family of the deceased as a whole at the time of the death of the employee was below the limit prescribed by the Government order, there cannot be any embargo in giving employment to one of the persons recognised in the Government orders on the subject as eligible for appointment under Rule 51B under the compassionate employment scheme. It is submitted that since by the Government orders it is accepted that married daughter is also entitled to appointment under compassionate employment

scheme, the contention that since the 5th respondent was not a dependent of the deceased employee, she is not entitled to employment under 51B is unsustainable.

8. In respect of aided school teachers and non-teaching staff, the right to compassionate employment for dependents of the deceased employees is contained in Rule 51B of Chapter XIV-A and Rule 9A of Chapter XXIVA. Rule 51B reads as under:

> "**51B**. The Manager shall give employment to a dependent of an aided school teacher dying in harness. Government orders relating to employment assistance to the dependents of Government servants dying in harness shall mutatis mutandis, apply in the matter of such appointment."

Rule 9A of Chapter XXIVA reads as under:

> "9A. The manager shall give employment to a dependent of the non-teaching staff of an aided school dying in harness. Government orders relating to employment assistance to the dependents of Government servants dying in harness shall, mutatis mutandis, apply in the matter of such appointments."

Both rules stipulate that the manager shall give employment to a dependent of an aided school teacher or non-teaching staff of an aided school dying in harness. Both rules state that Government orders relating to employment assistance to dependents of Government service dying in harness shall *mutatis mutandis* apply in the matter of such appointment. The compassionate employment scheme for Government servants is contained in G.O

(P) No.12/99/P&ARD dated 24.5.1999. By communication No.C1701/J3/2000/G.Edn. dated 6.1.2001, the Government has informed the Director of Public Instruction that married son/married daughter may also be considered for the benefit of compassionate employment scheme if they are otherwise eligible. By Government letter No.2806/ R3/2001/P&ARD dated 19.3.2001, the Government informed the Director of Public Instruction that if the application for compassionate employment happens to be of the married son/daughter, their income should also be reckoned along with the income of the family of the deceased for calculating the income of the family of the deceased Government servant. Here also, it is reiterated that married son/daughter may also be considered for the benefit of the scheme if they are eligible otherwise. In the Government order regulating the compassionate employment also, it is stated that the scheme is intended for providing employment assistance to the dependents of Government servants who die in harness. Under Clause 4, applications of dependents of the Government servant who die in harness will be considered for employment assistance under the scheme. Every clause in the same

repeatedly refers to dependents of the employees as the person/persons eligible for appointment under the dying in harness scheme. It is also stated that only one dependent will be given employment assistance under the scheme. Persons mentioned in the scheme eligible for such appointment are widow/widower, son and daughter, in the said order of priority and son and daughter include adopted son and adopted daughter respectively and will rank after son/daughter. However, by G.O (P).No.24/99/P&ARD dated 18.11.1999 it has been clarified that in the case of unmarried Government employees dying in harness, father/mother and unmarried sister/unmarried brother shall also be eligible for employment assistance under the scheme. When there is a dispute between two dependents the person recommended by the widow/widower would be preferred. In the case of dependents of widow/widower the consent of widow/widower is to be invariably obtained. The words, "dependent of the deceased", have been so repeated often in the Government order which would indicate that the requirement that the applicant himself should be a dependent of the deceased is an essential eligibility condition under the scheme. Therefore, I am

of opinion that the applicant for employment assistance under the Compassionate Employment Scheme should be a dependent of the deceased for claiming employment under the dying in harness scheme whether the applicant is a widow/widower or son or daughter or married son or daughter or an adopted son or daughter.

9. In fact, in the two Government orders referred to above, which recognise the right of married sons/daughters also for compassionate employment, it is specifically stated that they should be eligible otherwise. One of the eligibility conditions in the scheme is that the applicant should be a dependent of the deceased. That would necessarily mean that for becoming eligible for appointment under the scheme the married daughter/son also should have been a dependent of the deceased at the time of death.

10. I am fortified in this view by a Division Bench decision of this Court in *Rev. Mother, Delphine Mary v. State of Kerala* [2002 (1) KLT 137] which is with reference to the right of married son or daughter for employment assistance under the scheme. In the same, in paragraph 5, the Division Bench held as

follows:-

> "Counsel for the management as we have already indicated submitted that the above mentioned clause has excluded married daughter/son from the purview of clause 13(a) of the Scheme while the previous Government Order dated 23.12.92 specifically included married daughter and son also. Consequently the manager is justified in not entertaining the claim of the married daughter. Such a contention was however accepted by a learned Judge of this Court in 1999 (1) KLT 249 and W.A.287/99 and W.A.284/99 filed against the said judgment were dismissed. All the same we are of the view a more reasonable approach is to consider the claim of married son and daughter also. Provided they can show, in spite of the marriage, he/she was a dependent on the deceased and could not tide over the sudden crisis due to the death of the breadwinner of the family. The marriage may change the status of a person, but his or her status as a dependent of the deceased may continue. We are of the view that the mere fact that either daughter or son got married does not mean that he/she has lost his claim for appointment under Rule 51B of Chapter XIV A of K.E.R. as well as R.9A of Chapter XXIV-A of KER read with Government Order dated 30.3.1995. The object and purpose of R.51B of Chapter XXIV-A as well as R.9 A of XXIV-A of K.E.R. is to give some assistance to the dependents of the deceased. Object of those provisions as well as the liberalised scheme framed by the Government would be defeated if the claim of a married daughter or son is rejected if they are otherwise dependents on the deceased. In view of the above mentioned circumstance we hold that married son or married daughter is also entitled to get benefit of R.51-B of Chapter XIV as well as R.9A of Chapter XXIV-A of K.E.R. read with the liberalised scheme."

(Emphasis supplied)

As such there can be no doubt that in order to become eligible to apply for compassionate employment under Rule 51B read with the Government orders on the subject the applicant should have been a dependent of the deceased at the time of his/her death. This includes the married daughter/son of the deceased.

11. Coming to the present case, in the counter affidavit

filed by the 5th respondent she stated that she was the eldest of 3 daughters of deceased Lalitha and that she was married in the year 1993. The next sister was married in the year 1995 and the youngest one who was a student at the time of death of their mother was married in 2005. She further states that her husband is working as an Assistant Administrative Officer in an Insurance Company and he is presently drawing a gross salary of Rs.15,439/- and net salary of Rs.6160/-. Regarding herself, she states that she was employed at Bharatha Matha Higher Secondary School, Palakkad, and was drawing a salary as mentioned in Ext.P4 certificate which is Rs.2728/- in July 2000. These admitted facts would go to show that the 5th respondent was not a dependent of the deceased Lalitha at the time of death. That would certainly disentitle the 5th respondent for employment assistance under Rule 51B of Chapter XIVA of the KER read with the Government orders referred to therein.

12. As far as the 4th respondent is concerned, there is an averment in the writ petition that he was profitably employed elsewhere and was not actually interested for appointment in the school. He has not chosen to controvert this averment by filing a

counter affidavit by himself. In the counter affidavit sworn to by the 5th respondent it is stated that she is swearing to the counter affidavit on behalf of the 4th respondent as well and she is authorised to do so. However, barring the last paragraph, the counter affidavit deals with her case only. In the 5th paragraph she has controverted the allegation that the 4th has not submitted the application in time. There is no denial of the averment of the petitioners that the 4th respondent is profitably employed elsewhere and that he was not interested in employment in the school.

13. Further, at the time of death of his father, the 4th respondent was a major. He did not file an application himself initially. Ext.P3 letter dated 22.7.2000 was sent by his mother to the manager seeking employment for her son. The same was returned as 'unclaimed'. There is no material on record to show as to when exactly he himself filed the application for employment. His own application produced by the petitioners as part of Ext.P10 is undated. The income certificate produced by him is dated 30.10.2002. Therefore, the application could not have been filed before 30.10.2002. His father died on 19.7.2000.

Therefore, by 30.10.2002 the limitation period of two years had already expired. The question as to whether Ext.P3 letter dated 22.7.2000 could have been treated as an application, need not be considered now in the absence of a counter affidavit sworn to by him in this writ petition controverting the averments in the writ petition, especially in view of the long gap of more than two years between Ext.P3 letter and the formal application, which would lend credence to the averment of the petitioners that he was profitably employed elsewhere and he is not interested in employment in the school, which in any event has not been controverted. While taking this view, I also have in mind the various decisions of this court and the Supreme Court holding that the scheme for employment assistance to the dependent of an employee dying in harness is intended to tide over a sudden and unexpected crisis the family of the employee may face due to the death of the head of the family. In this connection, I also note the decision of a Division Bench of this court in *Corporate Manager, Diocese of Thrissur v. Jayanarayanan* [2003(1) KLT S.N.33 Case No.45] which holds that if the applicant has not raised his claim in the proper form within the period prescribed

in the Government order, claim for employment assistance need not be considered. In that view, the 4th respondent also cannot now stake claim for appointment under Rule 51B.

14. In view of the above findings, it is not necessary to consider the other contentions regarding the family income of the 5th respondent and as to whether she has applied within the period prescribed by the Government order.

15. Therefore, the petitioners are entitled to succeed in this writ petition. Accordingly, Exts.P8 and P9 orders are quashed and it is declared that respondents 4 and 5 are not entitled to get appointment under Rule 51B of Chapter XIVA of the KER in the 1st petitioner's school. The petitioners are also entitled to consequential reliefs of approval of appointments of petitioners 2 to 4 and payment of salary, if they are otherwise eligible. Orders in this regard shall be passed by the 1st respondent within one month from the date of receipt of a copy of this judgment.

The writ petition is allowed as above without any order as to costs.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE